



## Lobbying Ordinance Review

### PROPOSED OPTIONS FOR DEFINING AN “ORGANIZATION LOBBYIST”

Based on comments made by Commissioners, members of the regulated community, and members of the public, as well as a review of lobbying laws in other jurisdictions, staff has identified five general options for the Commission to consider when determining which types of entities should be considered “organization lobbyists” subject to the City’s lobbying registration and disclosure requirements. As set forth in the pages that follow, each option has its own set of advantages and disadvantages. These options consist of thresholds based on the following:

1. Number of Contacts
2. Number of Hours Spent on Lobbying Activities
3. Percentage of Time Spent on Lobbying Activities
4. Compensation for Engaging in Lobbying Activities
5. Job Description

In addition to the five types of threshold options, the Commission may wish to consider an exemption for the owners of business entities, as well as an exemption for organizations with less than a specified number of employees or members, or those with less than a specified amount of revenue. One or both of these exemptions could be combined with any of the threshold options.

When considering the different threshold options, the Commission might also want to consider that the proposed \$1 threshold for contract lobbyists could encourage companies to bring lobbyists “in-house” to avoid registration and reporting; the higher the organization lobbyist threshold, the more likely an entity will be exempt.

The threshold and related options are discussed separately on the following pages.

## **OPTION 1 – NUMBER OF CONTACTS**

- Concept:** An entity would be required to register as an “organization lobbyist” if it pays one or more of its own employees to lobby on its behalf, and if those employees (individually or in the aggregate) have a certain number of lobbying contacts with City Officials within a certain period of time.
- Decisions:** This option would require the Commission to make a determination regarding the following items:
- (a) the appropriate number of contacts (5? 10? 25?)
  - (b) the appropriate timeframe (1 month? 3 months?)
  - (c) whether or not to exclude contacts by owners of a business
  - (d) whether or not to use (1) number of employees and members; (2) gross revenues in a fiscal year; or (3) a combination of both to exclude certain types or sizes of organizations from the definition of “organization,” and if so to identify the appropriate number and/or dollar amount.
- Pros:** Will capture only those entities with designated number of lobbying contacts, and will avoid regulating entities whose lobbying activities do not reach contacts threshold
- Provides an easily verifiable and enforceable set of criteria for determining whether an individual is a lobbyist
- City Officials can independently corroborate a person’s contact
- Cons:** Requires a detailed and comprehensive definition of “contact” (see 8/10/06 draft language)
- Potential for disputes over what constitutes a contact

## **OPTION 2 – NUMBER OF HOURS SPENT ON LOBBYING ACTIVITIES**

**Concept:** An entity would be required to register as an “organization lobbyist” if it pays one or more of its own employees to lobby on its behalf, and if, within a defined period of time, those employees (individually or in the aggregate) spend at least a certain number of hours lobbying City Officials or engaging in lobbying-related activities.

**Decisions:** This option would require the Commission to make a determination regarding the following items:

- (a) the appropriate number of hours (10? 25? 50? 100?)
- (b) the appropriate timeframe (1 month? 3 months?)
- (c) whether or not to exclude lobbying activities by owners of a business
- (d) whether or not to use (1) number of employees and members; (2) gross revenues; or (3) a combination of both to exclude certain types or sizes of organizations from the definition of “organization,” and if so to identify the appropriate number or dollar amount.

**Pros:** Will capture only those entities that employ individuals who spend a certain number of hours lobbying, and will avoid regulating entities whose employees spend a lesser amount of time lobbying

**Cons:** From an enforcement perspective, it can be difficult to determine the total number of hours an employee spends on lobbying activities when employees are not required to keep track of time spent lobbying.

Requires a detailed and comprehensive list of what constitutes “lobbying” and related activities

Potential for disputes concerning how much time a person spends on a particular activity

### **OPTION 3 – PERCENTAGE OF TIME SPENT ON LOBBYING ACTIVITIES**

**Concept:** An entity would be required to register as an “organization lobbyist” if it pays an employee to lobby on its behalf, and if, within a defined period of time, that employee spend at least a certain percentage of his or her time lobbying City Officials or engaging in lobbying-related activities.

**Decisions:** This option would require the Commission to make a determination regarding the following items:

- (a) the appropriate percentage of time (10%? 20% 33%? 50%?)
- (b) the appropriate timeframe (1 month? 3 months?)
- (c) whether or not to exclude lobbying activities by owners of a business
- (d) whether or not to use (1) number of employees and members; (2) gross revenues; or (3) a combination of both to exclude certain types or sizes of organizations from the definition of “organization,” and if so to identify the appropriate number or dollar amount.

**Pros:** Will capture only those entities that employ individuals who spend a certain portion of their time lobbying, and will avoid regulating entities whose employees spend a lesser amount of time lobbying

**Cons:** From an enforcement perspective, it is difficult to determine total percentage of time spent lobbying when employees are not required to keep track of such time.

Requires a detailed and comprehensive list of what constitutes “lobbying” and related activities

Lobbying activities could be spread out among multiple employees to avoid one employee reaching the percentage threshold

Potential for disputes concerning how much time an employee spends on a particular activity, and what percentage that time is to the total work performed by that employee

## **OPTION 4 – COMPENSATION FOR ENGAGING IN LOBBYING ACTIVITIES**

**Concept:** This option is based on the rules currently in place for individual lobbyists. Under this option, an entity would be required to register as an “organization lobbyist” if it pays one or more of its own employees to lobby on its behalf, and if, within a defined period of time, at least one of its employees is paid at least a certain dollar amount for lobbying City Officials or engaging in lobbying-related activities.

**Decisions:** This option would require the Commission to make a determination regarding the following items:

- (a) the appropriate amount of compensation (currently \$2,625)
- (b) the types of compensation that should be considered (e.g. salary, benefits, bonuses, stock options, etc.)
- (c) the appropriate timeframe (currently any calendar quarter)
- (d) whether or not to exclude lobbying activities by owners of a business (currently owners are not exempt)
- (e) whether or not to use (1) number of employees and members; (2) gross revenues; or (3) a combination of both to exclude certain types or sizes of organizations from the definition of “organization,” and if so to identify the appropriate number or dollar amount (currently there are no exemptions for particular types or sizes of organizations)

**Pros:** May capture entities that employ individuals who spend a substantial number of hours lobbying, and may avoid regulating entities whose employees spend a lesser amount of time lobbying

**Cons:** From an enforcement perspective, it can be difficult to determine the total amount of compensation an employee receives for engaging in lobbying activities when employees are not required to keep track of time spent lobbying.

Requires a detailed and comprehensive list of what constitutes “lobbying” and related activities

Potential for disputes concerning how much time an employee spends on a particular activity

Employees may be reluctant to disclose personal financial information (salary, benefits, and bonuses)

Based on an individual’s earnings, not amount of lobbying. Under the current system, individuals who make more money must register before individuals who make less money, even if they spend the same amount of time lobbying

At a low compensation level, an individual could engage in hundreds of lobbying activities within a calendar quarter without being considered a “lobbyist”

## **OPTION 5 – JOB DESCRIPTION**

**Concept:** An entity would be required to register as an “organization lobbyist” if it employs one or more employees whose principal duties include engaging in lobbying on behalf of the entity, and who does, in fact, lobby one or more City Officials.

**Decisions:** This option would require the Commission to make a determination regarding the following items:

- (a) whether “principal duties” should be based on a job description, the amount of time spent lobbying, or the percentage of time spent lobbying
- (b) if based on the amount of time spent lobbying, the appropriate amount of hours (40? 100?) and the appropriate time frame (1 month? 3 months?)
- (c) if based on the overall percentage of time spent lobbying, the appropriate percentage of time (33%? 50%? 75%?)
- (d) whether “principal duties” should be based only on lobbying activities in the City of San Diego, or whether they should also include duties associated with lobbying in other jurisdictions

**Pros:** Would capture only those organizations that have employees whose job duties clearly involve lobbying activities, and would avoid regulating organizations whose employees’ lobbying activities are supposedly only incidental to their regular duties.

**Cons:** An organization could easily circumvent the registration requirement by ensuring that job descriptions do not mention a significant amount of lobbying

An employee’s official job duties do not necessarily coincide with actual work performed

Potential for dispute over what constitutes an employee’s “principal duties”

Difficult to ascertain an employee’s true job description or job duties without conducting a full scale investigation into all of an employee’s activities

May be difficult or impossible to draft clear and unambiguous language; vague criteria could lead to confusion in regulated community and difficulty with enforcement

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